

Receipt Number

543775

8.

**UNITED STATES OF AMERICA
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IMAD HERMEZ

Plaintiff,

) **COMPLAINT**
) **JURY DEMAND**
)

Vs-

Case: 2:06-cv-12543
Assigned To: Zatkoff, Lawrence P
Referral Judge: Komives, Paul J
Filed: 06-08-2006 At 10:57 AM
CMP HERMEZ VS BALLY TOTAL FITNESS (LE)

BALLY TOTAL FITNESS CORPORATION,
a Delaware Corporation

Defendant.

)
)
)
)
)

LORELLI & MILOSEVICH
By: Vincent Lorelli (P-47007)
Attorney for Plaintiff
7031 Orchard Lake Rd, Ste 302
West Bloomfield, MI 48322
(248) 538-9696

COMPLAINT AND JURY DEMAND

Now Comes the Plaintiff, **IMAD HERMEZ**, by and through
his attorney, Vincent Lorelli, of LORELLI & MILOSEVICH, and for
a cause of action states as follows:

COUNT ONE

1. That the Plaintiff, **IMAD HERMEZ**, is a resident of the city of Waterford, citizen of Oakland County, State of Michigan.
2. Defendant, **BALLY TOTAL FITNESS CORPORATION** is a foreign corporation, being incorporated in the State of Delaware, with a principal place of business in the State of Illinois.
3. That the cause of action at the defendant's store in the City of Waterford, County of Oakland, State of Michigan on March 16, 2006.
4. The amount in controversy exceeds seventy-five thousand dollars (\$75,000.00).
5. Jurisdiction of this Court is predicated upon 28 U.S.C. 1332 (diversity of citizenship), with the plaintiff being a citizen of Michigan and the defendant being a citizen of Illinois and Delaware.
6. That on or about March 16, 2006, the Plaintiff herein, lawfully entered said real property, which is owned by the Defendant herein.
5. That at said time and place, the Plaintiff herein, did operate a "stair master" machine, which is owned by the Defendant herein, and that

said stairmaster did malfunction, causing the plaintiff to be severely injured.

6. That the said accident and injuries to the Plaintiff herein, were caused solely and proximately by the gross negligence, recklessness, willful and wanton action/inaction, and/or negligence of the Defendant herein, without any negligence, fault, contributory negligence or comparative negligence on the part of the Plaintiff herein.

7. That the Defendant's gross negligence, recklessness, willful and wanton action/inaction, and/or negligence at the time and place of the accident, among other things, consisted of the following:

- (a). In failing to maintain the stairmaster in the reasonable and safe condition by failing to take any measure of action necessary to render the machine safe for the users of the facility;
- (b). In failing to supervise the operation of the facility/machine so as to allow the creation of a dangerous and hazardous condition foreseeable and likely to cause harm and serious injury to the users of the facility/machine;
- (c). In failing to provide adequate warnings, safeguard, or notice as to the existence of such dangerous and hazardous conditions that were foreseeable and likely to cause harm and serious injury to users of said stairmaster, which were designed for use by the defendant's paying members;
- (d). In permitting said malfunctioning stairmaster to remain on the premises for a long period of time as to create a dangerous and hazardous condition foreseeable and likely to cause harm and serious injury to the users of said machine or ;

(e). In failing to properly and fully maintain said stairmaster thereby allowing such a dangerous and hazardous condition to exist for the users of said premises;

(f). In failing to properly and fully maintain said machine;

(g) In failing to take appropriate measures to fully and completely maintain said stairmaster;

(h). In leaving an known malfunctioning machine on said premises for unsuspecting customers to use;

(i). In leaving an known malfunctioning machine on said premises for unsuspecting customers to use for a long period of time;

(j). Failing to erect warning signs or place any type of danger cones in effect by the machine;

(k). Negligently, recklessly and carelessly leaving a known malfunctioning stairmaster machine on the premises for customers to use;

(l). In failing to warn invitees of the danger of this malfunctioning machine.

8. That the defendant either knew or should have known that such dangerous and hazardous conditions did exist, or were likely to exist, and were reckless, wanton, willful, grossly negligent and/or negligent in failing to take any measure of action to eliminate such dangerous and hazardous conditions so as to render said machine and premises safe for the defendant's customers.

9. That as a direct and proximate result of the carelessness, Plaintiff, IMAD HERMEZ, suffered serious, permanent and personal injuries in and about his body, including injuries to his head, neck, shoulders,

back, arms, suffering injuries to his muscles, soft tissues, blood vessels, ligaments, tendons and said injuries resulting in extreme conscious pain and suffering and such other and further injuries, which are presently latent and/or dormant, but which subsequently may be discovered by medical diagnosis, and furthermore, the Plaintiff, herein, suffered an aggravation of all known and unknown pre-existing conditions and furthermore, the Plaintiff does hereby specifically reserve the right to move for leave of the Court to amend this Complaint to comply to such proofs as are made that the time of the trial of said cause.

10. That by reason of the premises, Plaintiff has incurred and will continue to incur medical expenses, drugs, hospital bills and therapeutic devices, in an effort to alleviate the pain and suffering and physical imitations, which the Plaintiff has endured, and expects to endure for an unknown time into the future, and further, that said injuries sustained by Plaintiff herein, have resulting in a permanent adverse shortening of normal activities, employment and enjoyment of life of the Plaintiff herein.

11. That as a direct and proximate result of the injuries that the Plaintiff sustained, and in the future will sustain serious impairment of a body function, disability, physical pain and suffering and mental anguish, loss of income, future impairment of earning capacity and loss of life's pleasures.

WHEREFORE, the plaintiffs pray for a judgment against the defendant in an amount over SEVENTY-FIVE five thousand dollars, together with costs, interest and attorney fees so wrongfully incurred.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Vincent Lorelli', is written over a horizontal line. The signature is stylized with large, sweeping loops.

Vincent Lorelli P47007
Attorney for Plaintiff

Dated: 1 June 2006

JS 44 11/99

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: OAKLAND

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFSIMAD HERMEZ**DEFENDANTS**BALLY TOTAL Fitness Corporation

(b) County of Residence of First Listed

OAKLAND

County of Residence of First Listed

Delaware Corp

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

Vincent Lorelli (P97007)
7031 Orchard Lake #302
W. Bloomfield, MI 48322
(248) 538-9696

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item 111)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- For Diversity Cases Only: PLA DEF
 Citizen of This State ☒ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
 Citizen of Another ☐ 2 ☐ 2 Incorporated and Principal of Business in Another State ☐ 5 ☒ 5
 Citizen or Subject of a Foreign ☐ 3 ☐ 3

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEIT	
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Med. Malpractice	<input type="checkbox"/> 810 A	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 820 O		
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault Libel And Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 825 O of		
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Liquor Laws		
<input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 R.R. & Truck	SOCIAL SECURITY <input type="checkbox"/> 881 HIA (1395ff) <input type="checkbox"/> 882 Black Lung (923) <input type="checkbox"/> 883 DMC/DMM (405(g)) <input type="checkbox"/> 884 SSID Title XVI <input type="checkbox"/> 885 RSI (405(g))	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.		
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 680 Other		
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		LABOR		FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act		
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations		
			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act		
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 740 Railway Labor Act		
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation		
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General			
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty			
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other			
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights			
		<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 (specify) ☐ 6 Multi district Litigation ☐ 7 Judge from District Magistrate

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Negligence (Gross Negligence or Recklessness) in Diversity Case
BROUGHT UNDER 28 USC 1332

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

\$ DEMAND

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) instructions:** IF ANY

JUDGE

DOCKET NUMBER

DATE 6/2/06

SIGNATURE OF ATTORNEY OF RECORD

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
